

APR 26 1991



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

105 South Meridian Street  
P.O. Box 6015  
Indianapolis 46206-6015  
Telephone 317/232-8603

STATE OF INDIANA       )  
                              ) SS:       BEFORE THE INDIANA DEPARTMENT OF  
COUNTY OF MARION     )  
                              )  
IN THE MATTER OF:       )  
                              )  
COMMISSIONER,           )  
INDIANA DEPARTMENT OF   )  
ENVIRONMENTAL MANAGEMENT   )  
                              )  
                  Complainant,       )  
                              )  
                  vs.                )  
                              )  
GARY DEVELOPMENT COMPANY, INC.   )  
                              )  
                  Respondent.       )

CAUSE NO. 90-W-J-428

US EPA RECORDS CENTER REGION 5



**NOTICE OF FILING OF RECOMMENDED FINDINGS OF FACT/CONCLUSIONS  
OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE**

TO: ✓ Thor Boyko  
Office of Legal Counsel  
Indiana Department of  
Environmental Management  
105 South Meridian Street  
Indianapolis, Indiana 46225

Warren D. Krebs  
Parr, Richey, Obrensky & Morton  
121 Monument Circle  
Suite 500  
Indianapolis, Indiana 46204

You are hereby notified that on the 26 day of April, 1991, I, as Presiding Officer in the above cause, have presented to and have filed with the Technical Secretary of the Water Pollution Control Board the complete record of the proceedings heretofore held before me on the above cause including Recommended Findings of Fact and Conclusions of Law, other than the transcript of the oral testimony, together with my Recommended Order.

A copy of said Recommended Findings of Fact and Conclusions of Law and Recommended Order is enclosed and made a part of this notice.

You are further notified, as provided by IC 4-21.5-3-29(d)(2) that any interested and affected person may, within fifteen (15) days after receipt of notice file with the Technical Secretary of the Water Pollution Control Board, 5th Floor, Department of Environmental Management, 105 South Meridian Street, Indianapolis, Indiana 46225, objections to the entry of such Order.

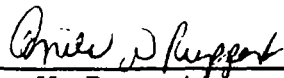
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Copies of such objections shall also be filed with the Presiding Officer and with all other parties or counsel of record.

If objections are filed, responsive pleadings shall be filed with the Technical Secretary by all other parties within ten (10) days of receipt of objections, with copies to the Presiding Officer and with all other parties or counsel of record.

Dated at Indianapolis, Indiana, this 26 day of April, 1991.

  
\_\_\_\_\_  
Anita W. Ruppert  
Presiding Officer

Enclosure

cc: Mr. David Nelsen



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COMMISSIONER, INDIANA )  
DEPARTMENT OF ENVIRONMENTAL )  
MANAGEMENT )

Complainant, )

vs. )

GARY DEVELOPMENT COMPANY, INC. )

Respondent. )

CAUSE NO. 90-W-J-428

## RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF THE ADMINISTRATIVE LAW JUDGE

### FINDINGS OF FACT

1. The Commissioner of the Indiana Department of Environmental Management (IDEM) is the Complainant in this cause and has jurisdiction over the Respondent and the subject matter of this action. The IDEM also has the legal authority to issue emergency orders under IC 4-21.5-4.

2. The Respondent is Gary Development Company, Inc. (Gary) and owns a sanitary landfill located in Gary, Indiana.

3. On August 1, 1990, an inspector with the IDEM conducted an on-site investigation of Gary's landfill property in response to allegations that water was being discharged from the landfill property to the Grand Calumet River.

4. IDEM's inspector observed a 2-5 acre pond on the far north side of Gary's property whose elevation was approximately 20 to 30 feet below that of the landfill.

5. A watchman employed by Gary advised the inspector that recent heavy rains had made it necessary to discharge excess water and to bring in truckloads of clay in order to prevent exposure of the landfill from the washing away of topsoil.

6. IDEM's inspector heard a pump running and observed water being pumped from the pond via a flexible hose which ran south into a 4" PVC pipe which was buried for most of its length. The PVC pipe emptied into a spillway which allowed the water to flow to a small ditch along railroad tracks and the ditch in turn entered the Grand Calumet River.

7. Gary's watchman refused to provide any further details about the discharge and ran to turn off the pump while IDEM's inspector followed the discharge line the other way.

8. As the pump was being shut off, the flow of water from the discharge end of the pipe was reduced to a trickle and the inspector observed a large volume of ponded water just below the end of the discharge pipe and a burned out area of vegetation further on towards the ditch.

9. The inspector did not take any samples of either the pond or the discharged water and none have since been taken.

10. Gary does not have a NPDES permit for discharging into the Grand Calumet River.

11. On October 18, 1990, the IDEM issued an Emergency Order of the Commissioner (Order) to Gary based, in whole, on the August 1, 1990, inspection report.

12. The Order alleged that Gary was discharging leachate water from their facility to the Grand Calumet River without the benefit of a NPDES permit.

13. The Order also alleges that the discharge of untreated leachate threatens the aquatic environment of the Grand Calumet River and human health.

14. As a result of IDEM's findings, Gary was ordered to immediately cease the discharge of leachate into state waters and to apply for a NPDES permit within 60 days of the Order.

15. Gary timely filed its appeal of the Order, thereby initiating this action.

16. On April 14, 1980, Gary entered into an Agreed Order in Cause No. B-406, which the Stream Pollution Control Board approved on May 20, 1980. The Agreed Order required Gary to cease discharge of water from its landfill to the Grand Calumet River or other waters of the state except in conformity with a NPDES permit.

17. The April 14, 1980, Agreed Order operated as a provisional operating permit and required Gary to apply for a renewal no later than 90 days prior to the expiration date of the Agreed Order.

18. The Indiana Environmental Management Board (IEMB) received Gary's application for renewal on November 17, 1980. On February 16, 1982, IEMB granted Gary a renewal of Operating Permit No. 45-2, with nine conditions attached. Condition No. 5 prohibited Gary from discharging water from the site to the Grand Calumet River or other waters of the state, except in conformity with an approved NPDES permit.

19. Gary filed a petition for hearing, contesting the imposition of the nine conditions, including Condition No. 5.

20. Thereafter, Gary and IEMB reached a settlement on Gary's appeal under Cause No. N-53, and their Settlement Agreement and Recommended Agreed Order was approved and adopted by the Indiana Environmental Management Board on February 18, 1983.

21. Paragraph No. 3 of this Agreed Order deleted in its entirety the contested Condition No. 5, thereby eliminating the requirement for a NPDES permit.

22. The Agreed Order in Cause No. N-53 provided that Gary's operating permit should last for a period of two years from its effective date of March 1, 1983.

23. Prior to the end of this period, Gary submitted an application for renewal of its operating permit, but no decision has been issued thereon.

24. The 2-5 acre pond from which water was being discharged on August 1, 1990, is located in a portion of the landfill which remains unfilled and below the approved site elevation.

25. This northern section remains unfilled because under the terms of the Agreed Order in Cause No. N-53, Gary, prior to filling it, was required to take four soil borings from the site's west wall. If these test results showed the permeability of the clay wall to be  $5.0 \times 10^{-6}$  centimeters per second or less, then construction of the remaining portion of the clay perimeter walls could proceed and filling commence.

26. In November 1985, Gary submitted to IDEM a report of soil borings performed by ATEC Associates, the results of which demonstrated the permeability to be within the parameters of the Agreed Order. However, IDEM has not yet responded to the submission of this report.

27. The difference in the elevations of Gary's filled and unfilled sites contributes significantly to the ponding of water in the unfilled area.

28. On August 29, 1989, Gary filed with the IDEM a Notice of Suspending Operations and a Petition for Variance under I.C. 13-7-7-6. The notice also advised the IDEM of its failure to respond to both the 1985 soil boring results and the 1985 permit renewal application. In addition, Gary informed IDEM of the continued existence of the unfilled area which remains below the approved site elevation.

29. On December 11, 1989, Gary filed a Request for Hearing on its Petition for Variance. As with the soil boring report and operating permit renewal application, IDEM has never ruled on Gary's request for a hearing.

#### CONCLUSIONS OF LAW

1. Gary has invoked the jurisdiction of the Solid Waste Management Board, as well as the Water Pollution Control Board, through its affirmative defenses raised in this proceeding.

2. The February 18, 1983, Agreed Order in Cause No. N-53 is still in effect due to IDEM's failure to rule on Gary's operating permit renewal application.

3. 327 IAC 5-2-2 requires a NPDES permit for "...any discharge of pollutants into waters of the state as a point source discharge..."

4. There is not sufficient evidence to support IDEM's contention that the water discharged contained leachate.

5. However, the proximity of the pond to land-filled areas, plus the burned-out vegetation near the mouth of the pipe, supports the inference that the discharged water contains one or more pollutants.

6. Since the terms of the Agreed Order under Cause No. N-53 explicitly deleted the requirement for a NPDES permit, no chemical analysis or other observations sufficiently support IDEM's conclusion that the discharged water contained leachate, and IDEM has unreasonably delayed ruling on Gary's operating permit renewal application, the Emergency Order dated October 18, 1990, was not an appropriate vehicle for resolution of the discharge problem.

7. Nonetheless, there is sufficient evidence to support IDEM's position that Gary must obtain an NPDES permit for its point source discharge.

8. The soil boring report submitted by Gary in 1985 demonstrates an acceptable level of impermeability according to the terms contained in the Cause No. N-53 Agreed Order.

9. Gary is entitled to a hearing on its Petition for Variance, as it previously requested on December 11, 1989.

#### ORDER

1. Gary shall immediately cease discharging any water off-site until it obtains a valid NPDES permit.

2. IDEM shall rule on Gary's NPDES application within sixty days of receiving it.

3. Gary may at any time commence construction of the remaining portion of the clay perimeter in accordance with the terms of the Agreed Order in Cause No. N-53.

4. Gary's Request for Hearing submitted on December 11, 1989, is granted, the same having been assigned Cause No. 91-S-J-488 and entitled "In the Matter of: Request for Variance From Closure and Post-Closure Rules, Gary Development Company, Inc." Anita W. Ruppert shall be the Presiding Administrative Law Judge assigned to said cause.

Dated: 4/24/91

Anita W. Ruppert  
Anita W. Ruppert  
Administrative Law Judge

OWN order  
Gary Development. Thurs  
5/9

Hey Bruce,  
this found it's way  
to me for my possible  
meeting with Shor Friday  
morning. What is it we  
oppose - #3. ? What  
do we want change to say?

ATP